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No. 10-139

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

GRAZYNA H. CHRISTMAN,

Petitioner,

v.

UTICA NATIONAL INSURANCE GROUP, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION

JOSEPH A. DETRAGLIA
GETNICK LIVINGSTON ATKINSON
& PRIORE, LLP
Attorneys for Respondent
258 Genesee Street, Suite 401
Utica, New York 13502
(315) 797-9261
JDeTraglia@glagplawfirm.com

232032

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether Petitioner has presented compelling reasons to grant the Petition, where the Second Circuit's Order affirming the District Court's thorough analysis of Petitioner's evidence does not conflict with a decision of this Court or a Court of Appeals, does not implicate an important federal question that has not been settled by this Court, and does not depart so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

LIST OF PARTIES

The following list identifies all of the parties appearing both here and before the United States Court of Appeals for the Second Circuit: (1) Grazyna H. Christman, Petitioner; and (2) Utica Mutual Insurance Company, Respondent.

CORPORATE DISCLOSURE STATEMENT PURSUANT TO SUPREME COURT RULE 29.6

Pursuant to Sup. Ct. R. 29.6, Utica National Insurance Group, Inc. does not exist; rather, the correct name of Respondent is Utica Mutual Insurance Company, a mutual insurance company organized under the laws of New York State. Utica Mutual Insurance Company has never been a publicly traded corporation, has never issued any stock, and has never had a parent corporation. Utica Mutual Insurance Company is one of several insurance companies collectively referred to as the Utica National Insurance Group.

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RULES

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OPINIONS AND ORDERS BELOW

Christman v. Utica National Insurance Group, Inc., __ F.Supp.3d __, 2009 WL 838128 (N.D.N.Y. 2009), *aff'd Christman v. Utica National Insurance Group, Inc.*, __ F.3d __, 2010 WL 1718737 (2d Cir. 2010); *see also Christman v. Utica National Insurance Group*, N.Y.S.D.H.R. Case No. 10105010 Determination and Order After Investigation (June 16, 2006).

SUMMARY OF ARGUMENT

Petitioner has presented no "compelling reasons" for the granting of her Petitioner for a Writ of Certiorari ("Petition"). *See* Sup. Ct. R. 10. Specifically, Petitioner has failed to demonstrate that the Second Circuit's April 29, 2010 Summary Order ("Order") is in conflict with a decision of this Court or another Court of Appeals, implicates an important federal question that has not been settled by this Court, or departs so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. *See* Sup. Ct. R. 10(a)–(c). Accordingly, the Petition should be denied.

STATEMENT OF THE CASE

Following Petitioner's termination of employment by Respondent in February 2005 for unsatisfactory job performance, Petitioner filed a complaint of discrimination against Respondent in April 2005 with both the New York State Division of Human Rights ("NYSDHR") and the United States Equal Employment Opportunity Commission ("EEOC") alleging disability,

age and gender discrimination. The NYSDHR investigated Petitioner's complaint and in June 2006 issued a Determination and Order After Investigation dismissing her complaint. In August 2006, the EEOC dismissed Petitioner's dual-filed charge of discrimination against Respondent.

In November 2006, Petitioner filed an action against Respondent in the United States District Court for the Northern District of New York ("District Court") alleging disability, age and discrimination. Following discovery and motion practice, on March 27, 2009 the District Court, *inter alia*, granted summary judgment to Respondent and dismissed the action in its entirety. Petitioner appealed the District Court's judgment to the United States Court of Appeals for the Second Circuit, which affirmed the District Court's decision in all respects on April 29, 2010. Petitioner then filed the instant Petition for a Writ of Certiorari and Appendix.[1]

REASONS FOR DENYING THE PETITION

The Second Circuit's decision below does not conflict with a decision of this Court or any Court of Appeals, does not implicate a federal question that has not been decided by this Court, and does not depart so far from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power. Petitioner simply has not carried her heavy

[1] Petitioner's reproduction of the decisions by the Courts below as Appendices A and B contains typographical errors that are not present in the decisions originally issued by the Courts.

burden of demonstrating any "compelling reasons" for the Petition to be granted. *See* Sup. Ct. R. 10.

In their decisions below, the Second Circuit and District Court thoroughly analyzed Petitioner's employment discrimination claims under this Court's well-established *McDonnell Douglas* burden shifting standard. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). That standard is uniformly applied throughout the Circuit Courts of Appeals. *See, e.g., Brady v. Office of Sergeant at Arms*, 520 F.3d 490 (D.C. Cir. 2008); *Lockridge v. The University of Maine System*, 597 F.3d 464 (1st Cir. 2010); *Brown v. Coach Stores, Inc.*, 163 F.3d 706 (2nd Cir. 1998); *Geraci v. Moody-Tottrup, International, Inc.*, 82 F.3d 578 (3rd Cir. 1996); *Hawkins v. PepsiCo. Inc.*, 203 F.3d 274 (4th Cir. 2000), *cert. denied* 531 U.S. 875 (2000); *Sherrod v. American Airlines, Inc.*, 132 F.3d 1112 (5th Cir. 1998); *Booker v. Brown & Williamson Tobacco Co., Inc.*, 879 F.2d 1304 (6th Cir. 1989); *Everroad v. Scott Truck Systems, Inc.*, 604 F.3d 471 (7th Cir. 2010); *Griffith v. City of Des Moines*, 387 F.3d 733 (8th Cir. 2004); *Vasquez v. County of Los Angeles*, 349 F.3d 634 (9th Cir. 2004); *Carlile v. South Routt School District*, 739 F.2d 1496 (10th Cir. 1984); *Maddox v. Claytor*, 764 F.2d 1539 (11th Cir. 1985).[2]

Petitioner does not contend in her Petition that the Courts below applied the wrong legal standard to her

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[2] Indeed, Petitioner acknowledges in her Petition that the Second Circuit did, in fact, apply the well-established *McDonnell Douglas* standard to the facts of her case. *See* Petition at page 27.

claims. Instead, Petitioner appeals to this Court because she believes the facts of her case should have been analyzed in a manner more favorably to her. In short, Petitioner wants to reargue her case before this Court in hopes of receiving a better outcome.[3]

Turning to her questions presented, Petitioner cites no conflicting decisions of this Court or any Circuit Courts for her first question presented, and Petitioner cites no authority at all, let alone conflicting authority, for her second question presented. It is respectfully submitted that no authority or other basis exists to support the questions presented by Petitioner and therefore the Petition should be denied pursuant to this Court's rules.[4]

The only authority Petitioner cites as a purported conflict between the Circuit Courts rests within her third question presented. However, the Petition should be denied for two reasons. First, Petitioners' third question presented, like the first two, involves nothing more than an attempt to reargue facts that were fully considered and rejected by the Courts below under the proper legal standards. Therefore, the Petition should be denied on that basis alone.

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[3] Petitioner acknowledges in her Petition that she did not timely file a petition for rehearing with the Second Circuit. *See* Petition at page 1.

[4] In accordance with Sup. Ct. R. 15.2, Respondent articulated its sole question presented based on this Court's rules.

Secondly, there is simply no conflict whatsoever between the Second and Eighth Circuit Courts. In support of her Petition, Petitioner cites a twelve year old decision, *Lynn v. Deaconess Medical Center*, 160 F.3d 484 (8th Cir. 1998), for the proposition that this Court's intervention is needed to resolve a conflict between the Second and Eighth Circuits.[5] However, the Eighth Circuit in *Lynn* applied the same *McDonnell Douglas* burden-shifting standard applied by the Second Circuit below as follows: "[Lynn's] claims are analyzed under the three-stage burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green* . . . and applied in countless other cases." *Lynn*, 160 F.3d at 487 (citation omitted). Thus, there is no conflict to resolve.

Because Petitioner has not challenged the Second Circuit's *use* of the *McDonnell Douglas* standard, the same standard that the Eighth Circuit used in *Lynn*, all that is left for Petitioner to challenge is the Second Circuit's *application* of that standard as varying from the Eighth Circuit's application of it in *Lynn*. But again, that provides no basis for an appeal to this Court. And even if it did, the facts of Petitioner's case are not identical to the facts presented in *Lynn*, where the Eighth Circuit's weighing of the particular facts at issue there led to the particular outcome reached in that case.[6] Thus, the Petition should be denied.

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[5] Petitioner does not cite a more recent decision of the Eighth Circuit as purportedly conflicting with the Second Circuit's decision below.

[6] This Court has stated: "The facts necessarily will vary in Title VII cases." *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973).

Finally, it should be noted that the Eighth Circuit ruled in *Lynn* that the lower court had misapplied the "similarly situated" concept in discrimination claims as follows: "We think the district court applied the 'similarly situated' concept too narrowly . . . ." *Lynn*, 160 F.3d at 488. Here, however, Petitioner does not contend that the Second Circuit applied the "similarly situated" concept too narrowly, but rather argues that the Courts below should have weighed differently the record evidence concerning similarly situated employees. It is simply not a function of this Court to "re-weigh" the evidence analyzed under the correct legal standards by the Courts below. Accordingly, the Petition should be denied under this Court's rules, including Sup. Ct. R. 10.

CONCLUSION

Petitioner has not established any compelling reasons for this Court to grant the Petition. Therefore, Respondent respectfully requests that the Petition be denied.

Respectfully submitted,

JOSEPH A. DETRAGLIA
GETNICK LIVINGSTON ATKINSON
& PRIORE, LLP
Attorneys for Respondent
258 Genesee Street, Suite 401
Utica, New York 13502
(315) 797-9261
JDeTraglia@glagplawfirm.com